

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

KY HOME & GARDEN, LLC,

Plaintiff,

v.

AMI VENTURES, INC., et. al.

Defendants.

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Civil Action No. 4:20-cv-3382

**DEFENDANT AMI VENTURES, INC.'S ANSWER TO PLAINTIFF'S ORIGINAL AND
AMENDED COMPLAINTS**

Now comes Defendant AMI Ventures Inc., ("AMI") and answers all Complaints filed by Plaintiff as it relates to Defendant AMI. For the sake of continuity and organization, Defendant AMI specifically answers Plaintiff's Fourth Amended Complaint.

DEFENDANT'S ANSWER

The Parties

1. Defendant AMI admits the allegations in paragraph 1 of Plaintiff's Complaint.
2. Defendant AMI denies the allegations in paragraph 2 of Plaintiff's Complaint and states that the listed "dba" names are separate and independent businesses.
3. The allegations in paragraphs 3-11 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Jurisdiction and Venue

4. Defendant AMI denies the allegations in paragraphs 12-14.

Common Facts

5. Defendant AMI is without sufficient knowledge or information as to form a belief as to the truth of the allegations contained in paragraphs 15-19 and therefore denies the same.

Defendant AMI

6. Defendant AMI denies the allegations in paragraphs 20-28.

Defendants American Seechance, Inc., Fuzhou Seechance, Inc., Universal Garden Supply & Manufacturing, Inc., And La Green Garden, Inc. Collectively *dba* Hydro Planet (hereinafter “Hydro Planet Entities”)

7. The allegations in paragraphs 29-42 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Defendants Hua Vong; Thuong Nguyen; And Lys Hydro Garden, LLC (Collectively “Amazon Entities”)

8. The allegations in paragraphs 43-54 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Defendant Desert Cart Trading FZE

9. The allegations in paragraphs 55-64 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Defendant Hydro City USA

10. The allegations in paragraphs 65-76 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

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11. The allegations in paragraphs 77-84 are irrelevant to Defendant AMI and Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Count I-Trademark Infringement And Counterfeiting [15 U.S.C. § 1114]

12. Defendant AMI denies the allegations in paragraph 85 of Plaintiff's Complaint.
13. Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 86 of Plaintiff's Complaint and therefore denies the same.
14. Defendant AMI denies paragraph 87-90 of Plaintiff's Complaint as it relates to Defendant AMI and is without sufficient knowledge or information to form a belief as to the truth of the allegations as it relates to the other named Defendants and therefor denies the same.

Count II-Unfair Competition [15 U.S.C. § 1125(a)]

15. Defendant AMI denies paragraphs 91-95 of Plaintiff's Complaint as it relates to Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations as it relates to the other named Defendants and therefor denies the same.

Count III-IV [Common Law Trademark Infringement]

16. Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 96-97 of Plaintiff's Complaint and therefore denies the same.
17. Defendant AMI denies paragraphs 98-101 of Plaintiff's Complaint and is without sufficient knowledge or information to form a belief as to the truth of the allegations as it relates to the other named Defendants and therefor denies the same.

Count V-VI [Common Law Unfair Competition]

18. Defendant AMI denies the allegations of paragraph 102 of Plaintiff's Complaint.

19. Defendant AMI is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 103 of Plaintiff's Complaint and therefore denies the same.

20. Defendant AMI denies paragraphs 104-111 of Plaintiff's Complaint and is without sufficient knowledge or information to form a belief as to the truth of the allegations as it relates to the other named Defendants and therefor denies the same.

AFFIRMATIVE DEFENSES

By asserting the following affirmative defenses, Defendant AMI does not concede that it bears the burden of proof or persuasion for any of the defenses or issues raised therein. Defendant AMI reserves its right to amend its Answer to modify the following defenses or raise any additional defense not asserted herein of which it becomes aware hereafter through discovery or investigation. Subject to the foregoing, Defendant AMI states as follow:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

21. The Plaintiff, on one or more counts set therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Fair Use)

22. The claims made by Plaintiff are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

THIRD AFFIRMATIVE DEFENSE

(Innocent Infringement)

23. The claims made by Plaintiff are barred, in whole or in part, because any infringement, if any, was innocent.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

24. Plaintiff's claims are barred by laches, in that Plaintiff has unreasonably delayed efforts to enforce its rights, if any, despite its full awareness of AMI's actions.

FIFTH AFFIRMATIVE DEFENSE

(Generic Terms)

25. The claims made by Plaintiff are barred, in whole or in part, on the basis that some or all marks at issue are generic.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning)

26. The claims made by Plaintiff are barred, in whole or in part, on the basis that some or all marks at issue lack secondary meaning.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver, Acquiescence, and Estoppel)

27. Each of the purported claims set forth by Plaintiff is barred by the doctrines of waiver, acquiescence, and estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Non-Infringement)

28. Defendant has not infringed any applicable trademarks under federal or state law.

NINTH AFFIRMATIVE DEFENSE

(No Causation)

29. Plaintiff's claims against Defendant AMI are barred as Plaintiff's damages, if any, were not caused by Defendant AMI.

TENTH AFFIRMATIVE DEFENSE

(Comparative Fault of Third Parties)

30. As a separate and distinct affirmative defense, some or all of the claims alleged by Plaintiff have been legally caused by the negligence, carelessness, recklessness, fault or willful misconduct of other third parties. Accordingly, any such claims should be diminished in proportion to that degree of fault attributable to any third parties intentional or negligent conduct.

ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

31. Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendant AMI prays that Plaintiff KY Home & Garden, LLC takes nothing from their Complaints, including their Amended Complaints, and that Plaintiff's Complaints against Defendant AMI are dismissed with prejudice. Defendant AMI further prays that Defendant AMI recover reasonable attorney's fees, the costs of suit incurred herein, and such other and further relief which the Court may deem just and proper.

Dated this March 14, 2022

Respectfully Submitted,

The Darwich Law Firm

/s/Omar Darwich/

Omar F. Darwich
OH Bar No.: 99657

300 Weatherstone Dr.,
Wadsworth, OH 44281
(330) 333-0773

**Attorney For Defendant
AMI Ventures, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2022, served the foregoing document described as **DEFENDANT AMI VENTURES, INC'S ANSWER TO PLAINTIFF'S ORIGINAL AND AMENDED COMPLAINTS** on the following interested parties in this action in the manner indicated herein:

By electronically transmitting a copy of said document, via email, to:

KY HOME & GARDEN, LLC

Attention: Brandon J. Leavitt
Leavitt Eldredge Law Firm
4204 SW Green Oaks Blvd., Suite 140
Arlington, TX 76107
Brandon James Leavitt: Brandon@uslawpros.com

And through the courts ECF system.

Respectfully,

/s/Omar Darwich/
Omar Darwich.